IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 19TH JULY 2007 / 28TH ASHADHA 1929

Crl.MC.No. 2199 of 2007()

CRIME NO. 89/07 OF VYTHIRI POLICE STATION, WAYANAD

PETITIONER:

D. UGAMRAJ CHHAJER & SONS,
NO.22, IYYA MUDALI STREET, SOWCARPET,
CHENNAI-600 079, REPRESENTED BY ITS PROPREITOR,
D. UGAMRAJ CHHAJER.

BY ADV. SRI.K.B.SURESH

RESPONDENTS:
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1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. THE ADDITIONAL DIRECTOR GENERAL OF
POLICE, CRIME BRANCH, POLICE HEAD QUARTERS,
TRIVANDRUM.

3. THE SUPERINTENDENT OF POLICE,
KALPETTA, WYNAD.

4. THE CIRCLE INSPECTOR OF POLICE,
VYTHIRI, WYNAD DISTRICT.

BY PUBLIC PROSECUTOR SRI. M.S. BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 19/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 2199 of 2007

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Dated this the 19th day of July, 2007

O R D E R

The petitioner has come to this court with a prayer to invoke the powers under Section 482 Cr.P.C. to quash a direction issued to him by the Investigating Officer to produce a vehicle, which is the subject matter of crime No.89 of 2007. The crime was registered on 14.6.2007. The allegation is that a vehicle, which belongs to the defacto complainant and which was in his possession, was stealthily removed from his possession by some unknown miscreants on the night between 13.6.07 and 14.6.07. Investigation commenced. The Investigating Officer has come to know that the said vehicle was held by the defacto complainant as the owner on the basis of a duplicate registration certificate issued in 2000. Investigation has led the police to come to the conclusion that from 2000 to the date of the commission of the offence the vehicle was being transferred from person to person on the strength of such duplicate registration certificate. That is how different persons claimed to be the owner in possession of the vehicle prior to the defacto complainant.

2. In the course of investigation, it has come to the notice of the Investigating Officer that the vehicle is now in the possession of the petitioner. The petitioner admits possession of the vehicle. The Investigating Officer wanted the petitioner to produce the vehicle before the Investigating Officer for the purpose of investigation. The petitioner has come to this Court to challenge the said direction.

3. What is the case of the petitioner? According to the petitioner, he, a financier, is in possession of the original registration certificate of the vehicle. As early as in 2005 the petitioner had advanced an amount to the purchaser of the vehicle, one Subair. That transfer was effected in June, 2005. It is the case of the petitioner that the said Subair had committed default in payment of the hire instalments and consequent to such default, seizure of the vehicle had been effected and that is how the vehicle has come into the possession of the petitioner. The petitioner hence contends that the petitioner is not liable to produce the vehicle before the Investigating Officer or before the court having jurisdiction. According to the petitioner, he has a right of seizure under the agreement entered in June, 2005 and the vehicle is in his possession in pursuance of such right of re-possession which he has exercised.

4. The learned counsel for the petitioner submits that the original registration certificate is available with him and that shows that one P.J.Mathew was the owner of the vehicle when it was transferred to the said Subair, who had availed the hire purchase facility from the petitioner. The said P.J. Mathew is shown to be the registered owner of the vehicle even according to the defacto complainant. The said P.J. Mathew had allegedly lost possession of the registration certificate and consequently the duplicate registration certificate was issued to him, according to the defacto complainant. The questioning of the said P.J.Mathew by the police and the verification of the records by the police supports the version of the defacto complainant.

5. When was the seizure effected? From whom was the seizure effected? Where was the same effected? I find no specific and forthright answers forthcoming for these vital questions. Except that the vehicle is in the yard of the petitioner, no cogent or specific explanation is offered as to how the vehicle came into possession of the petitioner. The short contention is that the petitioner has a right of seizure and in exercise of the right of seizure the vehicle had come into possession of the petitioner. Such

right of seizure cannot obviously extend to a right to commit theft from the possession of the defacto complainant.

6. The Investigating Officer is prima facie satisfied that the vehicle had been stealthily removed from the defacto complainant on the night of 13.6.07. The vehicle is now found in the possession of the petitioner. The petitioner does not specifically explain how the vehicle moved out of the possession of the defacto complainant and came into his possession. I am in these circumstances satisfied that the attempt of the Investigating Officer to trace the vehicle and seize the same is absolutely justified. The petitioner has been given intimation to produce the vehicle. Notwithstanding the arguments about the inelegance of the language of the notice issued by the Investigating Officer, I find the attempt of the Investigating Officer to seize the stolen property - the vehicle - to be absolutely justified. At any rate, I am satisfied that the extra ordinary inherent jurisdiction available to this Court under Section 482 Cr.P.C. cannot and need not be invoked to interfere with such attempt made by the Investigating Officer to seize the allegedly stolen property.

7. The learned counsel for the petitioner submits that the Investigating Officer is not doing a proper job. Over the telephone the

petitioner has been threatened by the Investigating Officer with persistent demand to surrender the vehicle. The petitioner apprehends that the Investigating Officer may snatch away the vehicle from him by resort to unfair means. A pointed question was put to the petitioner's counsel whether the petitioner is prepared to surrender the vehicle before the learned Magistrate and avoid any such so called unpleasant course. There is no positive response from the petitioner's counsel to the suggestion of the court to surrender the vehicle before the learned Magistrate.

8. The learned counsel for the petitioner submits that in these circumstances the investigation may be directed to be handed over to some other superior police official of proven competence and integrity. I am not satisfied that the present Investigating Officer lacks those laudable qualities. The attempt made by the Investigating Officer to seize the allegedly stolen property, which is found to be in the possession of the petitioner, who does not specifically explain how and in what manner he came into possession of the same, cannot be branded as improper or unfair.

9. The above discussions lead me to the conclusion that no direction in favour of the petitioner is liable to be issued. However, I am satisfied that the petitioner can be given an opportunity, if he so chooses, to

surrender the vehicle before the Chief Judicial Magistrate, Kalpetta and avoid any such course which he reckons as unfair and vexatious. The Investigating Officer shall give the petitioner time till 31.7.2007. If in the meantime the petitioner produces the vehicle before the learned Magistrate and makes appropriate application before the Chief Judicial Magistrate, the Chief Judicial Magistrate shall pass appropriate orders after hearing all concerned. If the vehicle is not produced on or before 31.7.2007, the Investigating Officer shall be at liberty to take all such courses that are available to him under law in accordance with the Code of Criminal Procedure to seize the vehicle and bring it before the learned Magistrate.

10. Hand over the order to both sides.

(R. BASANT)
Judge

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